

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1609 & 1610 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SEIZURE ALI MOHAMMED ALI DODIYA

Appearance:

MR AM DAGLI for Petitioners

MR NAGIN N GANDHI for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/03/2000

ORAL JUDGEMENT

#. Both these Civil Revision Applications arise from the

Small Cause Suit No.97/95, in the court of Small Causes Court, Surat. In the first revision application, the defendants-petitioners challenged the order of the court below dated 24/09/99 passed below Exh.59. In this application, the prayer has been made for early hearing of the Exh.19. The court under impugned order, ordered that the application Exh.19 of the plaintiff has to be decided after giving opportunity to both the parties.

#. In the second revision application, the defendants-petitioners challenge the order of the court below dated 24/09/99 under which two applications viz. Exh.38 and 39 were came to be rejected. In the application Exh.38, the prayer has been made by the defendants-petitioners for rejection of the plaint under the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure, 1908. In the application Exh.39 the prayer has been made for modification or setting aside the injunction order passed by the court in favour of the plaintiff-respondent. Earlier, Shri R.S.Sanjanwala was the counsel, who was appearing in these two matters on behalf of the plaintiff-respondent and the plaintiff-respondent has changed the counsel and Shri Nagin Gandhi, advocate put appearance in these two matters. Shri Nagin Gandhi, counsel for the plaintiff-respondent made oral prayer under the instructions of his client for the withdrawal of the suit itself out of which these two revision applications have arisen. He further submits that as the plaintiff is seeking for the withdrawal of the suit itself, these two revision applications have become infructuous and the same may be dismissed.

#. Shri A.M.Dagli, learned counsel for the defendants-petitioners vehemently opposed this prayer made by the learned counsel for the plaintiff-respondent. In his submission about Rs.55 lakhs are outstanding against the plaintiff-respondents towards the dues of arrears of the amount for use and occupation of the disputed premises of the Corporation. It is submitted that the plaintiff-respondent is only a licensee and everything if taken in his favour that licence period has also come to an end. The Corporation is suffering huge losses and this is one of the way to avoid the payment of huge payment to the Corporation.

#. In the alternate Shri Dagli, contends that if this court permits the plaintiff-respondent to withdraw the suit then the cost to be awarded to the Corporation of the suit as well as these two revision applications.

#. Having given my thoughtful consideration to the objections raised by the learned counsel for the petitioner against the prayer made by the learned counsel for the plaintiff-respondent for the withdrawal of the suit, I am of the opinion that the first objection raised is wholly misconceived. It is the right of the plaintiff to withdraw his suit unconditionally at any stage. The matter would have been different where the plaintiff is seeking the withdrawal of the suit with liberty to file a fresh suit. Then there may be some semblance of justification in this objection of the defendant against this prayer. However, Shri Dagli is correct in his submission that if the plaintiff desires to withdraw his suit the cost has to be awarded to the defendant. On grant of permission to the plaintiff-respondent for unconditional withdrawal of the suit, these Civil Revision Applications will become infructuous and the same are to be dismissed. On dismissal of these revision applications costs may not be awarded against the other side but here in this case these civil revision applications are not to be dismissed on merits but as a result of the grant of the permission of withdrawal of the suit the same are to be dismissed as having become infructuous. The defendants-petitioners have prayed for the dismissal of the suit in the trial court and that application was rejected. This prayer which is made by the learned counsel for the plaintiff-respondent supports the application filed by the defendants-petitioners in trial court for dismissal of the suit.

#. In the facts of the case, I am satisfied that in case where the prayer made by the plaintiff-respondent for the unconditional withdrawal of the suit out of which these two revision applications arise is granted the petitioner is entitled for the costs of the same. The prayer made by the learned counsel for the plaintiff-respondent under the instruction of his client for the unconditional withdrawal of the Small Causes Suit No.97/95 pending in the court of Small Causes Court, Surat is granted and the said suit is dismissed as withdrawn. However, the defendant-petitioner shall be entitled for the costs of the suit. The learned court below is directed to draw the decree accordingly in the suit.

#. As a result of the dismissal of the suit as withdrawn out of which these two civil revision applications arise the same have become infructuous and are accordingly dismissed. Rule is discharged. Interim relief, if any, granted by this court stands vacated. The plaintiff-respondent is directed to pay Rs.1,100/- as costs of each Civil Revision Application to the

defendants-petitioners.

(S.K.Keshote, J.)

*Pvv